In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-595

FRANK E. MOTT AND MARY R. WILLIAMS, EXECUTORS OF THE LAST WILL AND TESTAMENT OF WALTER C. TEAGLE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a-15a) is reported at 462 F. 2d 512.

JURISDICTION

The judgment of the Court of Claims was entered on July 14, 1972. The petition for a writ of certiorari was filed on October 12, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether in computing the taxable income of an estate a distribution of corpus to a qualified charitable

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organization gives rise to a deduction under Section 661(a)(2).

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of Sections 642, 661, 662 and 663 of the Internal Revenue Code of 1954 and Section 1.663(a)-2 of the Treasury Regulations on Income Tax (1954 Code) are set forth in Appendix B to the petition (pp. 16a-19a).

STATEMENT

This case involves the income tax liability of the estate of Walter C. Teagle during the estate's taxable years ending July 31, 1963, 1964, and 1965. Under the terms of Teagle's will, two-thirds of the value of the estate, after payment of the debts, expenses, and specific bequests, was left to the Teagle Foundation, Inc., a tax-exempt charitable foundation. The residue of the estate, including all income earned during the period of administration, was left in trust for the benefit of Jane W. Teagle, an alternate life beneficiary, with specified remainders over. (Pet. App. 2a.)

During the years of the period of administration at issue here, the estate made distributions out of corpus to the charitable beneficiary and a distribution of income to the income beneficiary in the following amounts (Pet. App. 2a):

Name	1963	1964	1965
Teagle Foundation	$13,165,575.75	$405,379.02	$375,000.00
Jane W. Teagle	$100,000.00	$0	$0

In computing the taxable estate, the executors were allowed an estate tax deduction of $14,107,420.90, for the charitable bequest to the Teagle Foundation. The petitioners sought below and were denied an income tax deduction for the payments which they made in satisfaction of the charitable bequest. (Pet. App. 3a.) The stipulated amount of tax involved in each year on the taxable income of the estate is as follows:[1]

1963, $743,382.94.
1964, $67,435.50.
1965, $70,285.26.

ARGUMENT

The decision below is correct. There is no conflict or other reason for further review.

1. The basic policy underlying the income taxation of estates is that the entire net income of the estate should be taxed only once—either to the estate, or to a taxable beneficiary, or in part to each. To that end,

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[1] Paragraph 20 of the Stipulation of Facts filed February 24, 1971, provided:

"As a result of the disallowance of part of plaintiffs' claims embodied in the amended returns for the Estate's taxable years ended July 31, 1963, and 1964, and as a result of the lapse of more than six months from the date on which plaintiffs filed their claim for refund for the Estate's taxable year ended July 31, 1965, the following tax and interest are in issue in this action:

"Taxable year ended	Tax	Interest
July 31, 1963	$743,382.94	
July 31, 1964	$ 67,435.50	
July 31, 1965	$ 70,285.26	$11,183.07"

Section 661(a) of the Internal Revenue Code of 1954 allows an estate a deduction for the sum of (1) any amount of income "required to be distributed currently" and (2) "any other amounts properly paid or credited or required to be distributed" for the taxable year, provided the deduction does not exceed "distributable net income"—i.e., the taxable income of the estate, with certain modifications not pertinent here (Section 643). In turn, Section 662(a) provides that distributions of income and/or corpus deducted by the estate are includible in the gross income of each beneficiary on a pro rata basis, to the extent of distributable net income. Under either provision, it is unnecessary to trace the source of a distribution.

Different rules, however, govern the deductibility of distributions which are specifically treated in other sections of the Code. Thus, Section 663(a)(1), for example, provides that money bequests payable either out of income or corpus, which are generally excludible from income by Section 102, are neither deductible by the estate nor taxable to the beneficiaries, as these distributions might otherwise be under Sections 661 and 662. Similarly, Section 642(c) specifically limits the deduction from estate income for a charitable distribution to bequests paid or set aside out of gross income. Accordingly, Section 663(a)(2) precludes the deduction under Section 661 of a charitable distribution qualifying under Section 642(c), thus preventing a double deduction. Moreover, because the Code (Section 2055) allows an estate tax deduction for charitable bequests, Treasury Regulations Section 1.663(a)-(2) provides that for income tax purposes amounts paid to

a qualified charitable organization are deductible only as provided in Section 642(c).

Petitioners, having already enjoyed an estate tax deduction in excess of $14 million for a charitable bequest to the Teagle Foundation (Pet. App. 3a), nonetheless seek the additional enjoyment of an income tax deduction for part of this same distribution of corpus. Under their theory, which is squarely contrary to Regulations Section 1.663(a)–2, a distribution of corpus to a charitable organization qualifies as "any other amounts * * * paid" within the meaning of Section 661(a)(2), and thus gives rise to the income tax deduction permitted by that section.

In sustaining the challenged regulation, the Court of Claims properly rejected petitioners' interpretation of the statute, which would lead to anomalous results entirely inconsistent with the statutory scheme governing the income taxation of estates. Literally read, Section 661(a)(2) would entitle an estate to deduct any amounts properly paid, whether or not to a beneficiary. Because an estate is already entitled to many of the deductions allowed to individuals (see Section 641(b)), petitioners' construction would give rise to double deductions for the same payment. Many estates, moreover, would be permitted to deduct charitable bequests for both income and estate tax purposes and, by proper timing, would be able to distribute income to individual beneficiaries free of any tax. These considerations, in themselves, require that the statutory language be construed in light of its object and policy, as reflected in the legislative history. See *Commissioner* v. *Bilder*, 369 U.S. 499; *United States* v. *Wise*, 370 U.S. 405.

In holding that petitioners were not entitled to deduct a corpus distribution to charity, the Court of Claims reached the only result compatible with the pertinent legislative history. Under prior law, it was necessary to trace the source of distributions (as between income and corpus), both for purposes of the charitable deduction and for allocating tax liability between an estate and its beneficiaries. See *Old Colony Co.* v. *Commissioner*, 301 U.S. 379. Because this rule led to manipulation and was difficult to apply, Congress enacted the present scheme, which eliminates the need for tracing, except in the area of charitable distributions. *Riggs National Bank* v. *United States*, 352 F. 2d 812 (Ct. Cl.); H. Rep. No. 1337, 83d Cong., 2d Sess., pp. 60–61, A 193; S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 82, 341. If Congress also had intended to alter the treatment of charitable distributions and permit an income tax deduction for distributions of corpus, it surely would have explained the reasons for such a radical change. But, as the court below recognized (Pet. App. 11a–14a), the tenor of the legislative history is to the contrary. By retaining the provision that the charitable deduction from estate income is available only if the source of the distribution is gross income, Congress indicated that elimination of the tracing requirement was confined to distributions to noncharitable beneficiaries. Under any other interpretation, Section 642(c) would be superfluous, since all distributions to charitable beneficiaries, from whatever source, would be deductible under Section 661(a)(2).

As the Court of Claims observed (Pet. App. 14a), this case illustrates the abuse which would be fostered by failing to distinguish between charitable and non-charitable distributions. If the estate is permitted to deduct payments made out of corpus in satisfaction of the bequest to the Teagle Foundation, it will pay no tax on the income it accumulates and, in subsequent years, will be able to make a tax-free distribution of that income to Jane Teagle, the income beneficiary.

2. The decision below, which is one of first impression, is not in conflict with any appellate decision, and the issue presented is not ripe for review by this Court. *Estate of Tait* v. *Commissioner,* 9 T.C.M. 122, allowed a distribution deduction to an estate for pension payments distributed to an individual beneficiary, even though the individual, a non-resident alien, was not subject to tax on these payments by virtue of the United States-Canadian Tax Convention. *Estate of Tait* is not, as petitioner asserts (Pet. 9–10), in conflict with the decision below, which deals with an estate distribution of corpus, deductible from the gross estate, to a charitable beneficiary. In any event, *Estate of Tait* is not an appellate decision; taxpayers' appeal from the first decision, 11 T.C. 731, was remanded by stipulation of the parties, 49–2 U.S.T.C., par. 9359 (C.A. 4) (not officially reported), and the government conceded the issue in the remanded proceedings, 9 T.C.M. 122.

United States v. *Bank of America,* 326 F. 2d 51 (C.A. 9), also asserted to be in conflict with the decision below (Pet. 10), does not even involve Section

661. There, the issue was whether a trust was entitled to an income tax deduction under Section 642(c) for distribution to a charity, where the distributions were made out of amounts regarded as income for federal tax purposes, but as corpus under state law. The court rejected the Government's contention that state law characterized the distribution and allowed the deduction. Indeed, the inquiry which the court made in that case was based on the premise assumed by the court below here, that the distributions would not have been deductible if they had been deemed to have been made from corpus.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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